

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
ALBANY DIVISION**

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SHAWN PERRY,

Plaintiff,

COURT FILE NO. 1:17-CV-688-MAD/DJS

v.

FIRST CONTACT, LLC, IENERGIZER,  
INC., CONVERGENT OUTSOURCING,  
INC., and EXPERT GLOBAL SOLUTIONS,  
INC.,

Defendants.

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**ANSWER OF FIRST CONTACT, LLC**

Defendant First Contact, LLC (“First Contact”), as and for its Answer to the Complaint of Plaintiff Shawn Perry (“Plaintiff”), denies each and every allegation set forth therein unless otherwise specifically admitted herein or otherwise qualified and states and alleges as follows:

1. In response to paragraph 1 of Plaintiff’s Complaint, First Contact admits that Plaintiff brings this matter alleging violations of the TCPA, but denies that it violated any law.
2. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 2 of Plaintiff’s Complaint and therefore denies the same.
3. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 3 of Plaintiff’s Complaint and therefore denies the same.
4. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 4 of Plaintiff’s Complaint and therefore denies the same.

5. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 5 of Plaintiff's Complaint and therefore denies the same.

6. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 6 of Plaintiff's Complaint and therefore denies the same.

7. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 7 of Plaintiff's Complaint and therefore denies the same.

8. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 8 of Plaintiff's Complaint and therefore denies the same.

9. In response to paragraph 9 of Plaintiff's Complaint, First Contact admits that it is a collection agency, but has insufficient information and knowledge as to whether it is a "national debt collection agency" as intended by Plaintiff.

10. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 10 of Plaintiff's Complaint and therefore denies the same.

11. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 11 of Plaintiff's Complaint and therefore denies the same.

12. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 12 of Plaintiff's Complaint and therefore denies the same.

13. In response to paragraph 13 of Plaintiff's Complaint, First Contact admits that it is in the business of collecting on unpaid debt. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

14. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 14 of Plaintiff's Complaint and therefore denies the same.

15. In response to paragraph 15 of Plaintiff's Complaint, First Contact admits that the account was a Credit One Bank account. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

16. In response to paragraph 16 of Plaintiff's Complaint, First Contact denies that it contacted Plaintiff in May 2016 and therefore denies the allegations against it. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

17. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 17 of Plaintiff's Complaint and therefore denies the same.

18. In response to paragraph 18 of Plaintiff's Complaint, First Contact denies all allegations against it. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

19. In response to paragraph 19 of Plaintiff's Complaint, First Contact denies all allegations against it. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

20. In response to paragraph 20 of Plaintiff's Complaint, First Contact denies all allegations against it. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

21. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 21 of Plaintiff's Complaint and therefore denies the same.

22. In response to paragraph 22 of Plaintiff's Complaint, First Contact denies all allegations against it. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

23. In response to paragraph 23 of Plaintiff's Complaint, First Contact denies all allegations against it. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

24. In response to paragraph 24 of Plaintiff's Complaint, First Contact denies all allegations against it. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

25. In response to paragraph 25 of Plaintiff's Complaint, First Contact denies all allegations against it. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

26. In response to paragraph 26 of Plaintiff's Complaint, First Contact denies all allegations against it. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

27. In response to paragraph 27 of Plaintiff's Complaint, First Contact asserts that Plaintiff purports to state a conclusion of law to which no response is required. To the extent a response is required, First Contact has insufficient information and knowledge to either admit or deny the allegations and therefore denies the same.

28. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 28 of Plaintiff's Complaint and therefore denies the same.

29. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 29 of Plaintiff's Complaint and therefore denies the same.

30. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 30 of Plaintiff's Complaint and therefore denies the same.

31. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 31 of Plaintiff's Complaint and therefore denies the same.

32. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 32 of Plaintiff's Complaint and therefore denies the same.

33. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 33 of Plaintiff's Complaint and therefore denies the same.

34. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 34 of Plaintiff's Complaint and therefore denies the same.

35. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 35 of Plaintiff's Complaint and therefore denies the same.

36. In response to paragraph 36 of Plaintiff's Complaint, First Contact asserts that Plaintiff purports to state a conclusion of law to which no response is required. To the extent a response is required, First Contact has insufficient information and knowledge to either admit or deny the allegations and therefore denies the same.

37. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 37 of Plaintiff's Complaint and therefore denies the same.

38. In response to paragraph 38 of Plaintiff's Complaint, First Contact denies all allegations against it. To all other extents, First Contact has insufficient information and knowledge to either admit or deny the remaining allegations and therefore denies the same.

39. First Contact adopts by reference all preceding paragraphs as though fully set forth herein.

40. First Contact denies the allegations set forth in paragraph 40 of Plaintiff's Complaint.

41. First Contact denies the allegations set forth in paragraph 41 of Plaintiff's Complaint.

42. First Contact denies the allegations set forth in paragraph 42 of Plaintiff's Complaint.

43. First Contact denies the allegations set forth in paragraph 43 of Plaintiff's Complaint.

44. First Contact denies the allegations set forth in paragraph 44 of Plaintiff's Complaint.

45. First Contact adopts by reference all preceding paragraphs as though fully set forth herein.

46. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 46 of Plaintiff's Complaint and therefore denies the same.

47. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 47 of Plaintiff's Complaint and therefore denies the same.

48. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 48 of Plaintiff's Complaint and therefore denies the same.

49. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 49 of Plaintiff's Complaint and therefore denies the same.

50. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 50 of Plaintiff's Complaint and therefore denies the same.

51. First Contact adopts by reference all preceding paragraphs as though fully set forth herein.

52. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 52 of Plaintiff's Complaint and therefore denies the same.

53. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 53 of Plaintiff's Complaint and therefore denies the same.

54. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 54 of Plaintiff's Complaint and therefore denies the same.

55. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 55 of Plaintiff's Complaint and therefore denies the same.

56. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 56 of Plaintiff's Complaint and therefore denies the same.

57. First Contact adopts by reference all preceding paragraphs as though fully set forth herein.

58. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 58 of Plaintiff's Complaint and therefore denies the same.

59. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 59 of Plaintiff's Complaint and therefore denies the same.

60. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 60 of Plaintiff's Complaint and therefore denies the same.

61. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 61 of Plaintiff's Complaint and therefore denies the same.

62. First Contact has insufficient information and knowledge to either admit or deny the allegations set forth in paragraph 62 of Plaintiff's Complaint and therefore denies the same.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

#### **SECOND DEFENSE**

Plaintiff suffered no damage from the alleged violations and therefore is not entitled to any award of damages, attorney fees or costs.

#### **THIRD DEFENSE**

Plaintiff provided consent to be called on the telephone number at issue and never revoked his consent. Moreover, because Plaintiff provided his telephone number in connection with a contract, any attempt to revoke to consent was ineffective.

#### **FOURTH DEFENSE**

Any violation of the law or damage suffered by Plaintiff, which First Contact denies, was due to the affirmative actions and/or omissions of Plaintiff or others and does not give rise to any liability of First Contact.

#### **FIFTH DEFENSE**

First Contact specifically denies that plaintiff has suffered any actual damages; however if such damages do exist, defendant asserts that such actual damage claims are subject to the defense of failure to mitigate.

#### **SIXTH DEFENSE**

Plaintiff has not suffered a concrete and actual injury; thus Plaintiff lacks standing.



**SEVENTH DEFENSE**

Plaintiff's claims are subject to a binding arbitration agreement.

**EIGHT DEFENSE**

Plaintiff's claims and the calls at issue in this litigation are the subject of a previously filed, and still pending, arbitration.

**WHEREFORE**, First Contact prays for an order and judgment of this Court in its favor against Plaintiff as follows:

1. Dismissing all causes of action against First Contact with prejudice and on the merits; and,
2. Awarding First Contact such other and further relief as the Court deems just and equitable.

MOSS & BARNETT

Dated: July 14, 2017

By /s/ Michael T. Etmund  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 14, 2017, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure and/or the Northern District's Local Rules, and/or the Northern District's Rules on Electronic Service, upon the following parties and participants:

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/s/ Michael T. Etmund  
Michael T. Etmund